

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA**

DENNIS ROSS and ANGELA
SCHUH, on behalf of themselves and
all others similarly situated,

Plaintiffs,

v.

COMMUNITY HEALTH SYSTEMS,
INC., CHSPSC, LLC, WILKES-
BARRE HOSPITAL COMPANY,
LLC, d/b/a COMMONWEALTH
HEALTH, MOSES TAYLOR
HOSPITAL, REGIONAL HOSPITAL
OF SCRANTON, SCRANTON
HOSPITAL COMPANY, LLC, and
WILKES-BARRE GENERAL
HOSPITAL,

Defendants.

Civil Action No.: 3:23-cv-02128

**BRIEF IN SUPPORT OF MOTION TO STAY DEADLINE TO RESPOND
TO COMPLAINT BY DEFENDANTS CHSPSC, LLC, WILKES-BARRE
HOSPITAL COMPANY, LLC, D/B/A COMMONWEALTH HEALTH,
MOSES TAYLOR HOSPITAL, REGIONAL HOSPITAL OF SCRANTON,
SCRANTON HOSPITAL COMPANY, LLC, AND WILKES-BARRE
GENERAL HOSPITAL**

Defendants CHSPSC, LLC, Wilkes-Barre Hospital Company, LLC, d/b/a
Commonwealth Health, Moses Taylor Hospital, Regional Hospital of Scranton,

Scranton Hospital Company, LLC, and Wilkes-Barre General Hospital (collectively, “Defendants”), respectfully submit this Brief in Support of their Motion to Stay the Deadline to Respond to Plaintiffs’ Complaint, pending the outcome of a Motion for Transfer to Multi-District Litigation (“MDL”).

INTRODUCTION

There is currently a proceeding before the U.S. Judicial Panel on Multidistrict Litigation (“JPML”) where a Motion for Transfer and Centralization was filed on October 16, 2023, to the District of Minnesota pursuant to 28 U.S.C. § 1407. *See Skurauskis, v. NationsBenefits Holdings, LLC*, Case No. 0:2023cv60830; *In Re Fortra File Transfer Software Data Security Breach Litigation*, MDL No. 3090. The granting of this motion would necessarily impact this case. The current lawsuit against Defendants relates to a data security incident of Fortra, LLC’s GoAnywhere managed file platform (the “Fortra Incident” or “Incident”). Fortra has been sued in the State of Minnesota due to the Incident. Additionally, numerous customers of Fortra (including Defendant CHSPSC) have been sued around the country as a result of the Incident. If granted, the motion to consolidate these cases in MDL would lead to the transfer of all of these matters to one consolidated docket in Minnesota. To preserve the resources of the Court and the parties, the instant matter should be stayed pending the outcome of that motion.

FACTUAL BACKGROUND

A. Plaintiff's Allegations

This action arises out of a data security incident involving the unauthorized access to Fortra's GoAnywhere MFT software. (Compl. ¶¶ 53-56). Plaintiffs are Pennsylvania citizens and allege that they were patients at one or more Defendant hospitals in Pennsylvania. (*Id.*, ¶¶ 10-11). Plaintiffs allege that on or about March 24, 2023, they received a notice from CHSPSC of the Fortra Incident. (*Id.*, ¶ 61).

Plaintiffs allege that as a result of the Incident, they "will continue to be at a heightened and certainly impending risk for fraud and identity theft, and their attendant damages for years to come." (*Id.*, ¶ 12). On this scant basis, and without articulating any actual harm or loss, Plaintiffs seek to proceed with a class action in this matter. In his original Complaint filed in the Eastern District of Pennsylvania, Plaintiff Ross stated an intention to seek a nationwide class. The present Complaint seeks to pursue the following class:

All individuals:

- (1) whose PII and/or PHI was collected or maintained in Pennsylvania by CHS, CHSPSC, WBHC, Commonwealth Health, Moses Taylor Hospital, Regional Hospital of Scranton, Scranton Hospital Company, and/or Wilkes-Barre General Hospital, and,
- (2) whose PII and/or PHI was compromised in the Data Breach that occurred between on or about January 28 and January 30, 2023 or to whom any Defendant sent a letter, to a mailing address in Pennsylvania, to inform of a data breach concerning his/her/their respective PII and/or PHI. (the "Class").

(Compl. ¶ 99).

B. The Fortra Incident and CHSPSC’s Response to the Fortra Incident.

The Fortra Incident occurred between January 28 and January 30, 2023, when Fortra discovered that an unauthorized third-party gained access to its GoAnywhere MFT software, compromising sets of files throughout the file transfer platform. (Compl. ¶¶ 53-56). CHSPSC is but one of many customers impacted by this event.

CHSPSC is a customer of Fortra. (Baldwin Decl. ¶ 12). Fortra is the developer of the GoAnywhere secure file transfer platform. (*Id.*) CHSPSC chose Fortra as its vendor for data security because, given the ever-growing problem of foreign threat actors and their evolving techniques in hacking computer systems, CHSPSC deemed it prudent to retain an industry leader for its secure file transfer platform. (*Id.* ¶ 13). Fortra is based in the State of Minnesota. (*Id.*, ¶ 14). Fortra’s GoAnywhere software is “SOC 2 compliant,” meaning that the platform has undergone rigorous audits to ensure it has implemented a high degree of cybersecurity safeguards. (*Id.*, ¶ 16). But between January 28 and 30, 2023, cybercriminals began to attack the Fortra platform, leveraging what are known as “zero-day” exploits. (*Id.*, ¶ 17). A zero-day exploit is a cyberattack vector or technique that takes advantage of an unknown or unaddressed security flaw in computer software, hardware, or firmware. ‘Zero day’ refers to the fact that the software or device vendor has zero days, or no time, to fix the flaw, because malicious actors can already use it to gain access to vulnerable

systems. See <https://www.ibm.com/topics/zero-day>.

C. One of Fortra’s Customers Files a Motion to Transfer All Related Cases to MDL.

Nations Benefits was one of Fortra’s customers impacted by the breach. On October 16, 2023, Nations Benefits filed a Motion for Transfer and Centralization of Related Actions to the District of Minnesota Pursuant to 28 U.S.C. § 1407 for Consolidated Pretrial Proceedings. A copy of that entity’s motion is attached hereto as **Exhibit 1**. A copy of their brief in support of their motion is attached as **Exhibit 2**. A copy of the Schedule of Actions submitted by Nations Benefits with its motion is attached as **Exhibit 3**. As that Schedule reflects, there are currently (at least) forty-six actions pending related to the Fortra breach.

ARGUMENT – ALL DEADLINES IN THIS CASE SHOULD BE STAYED.

Defendant moves this Court to stay all deadlines in this case until a ruling is made on whether this case will be transferred to the *In Re Fortra* Multidistrict Litigation docket.

This is one of nine cases filed against Defendants arising out of the data security incident involving Fortra, LLC’s GoAnywhere managed file transfer software that occurred on or around January 28th to 30th, 2023 (the “Fortra Incident”). Eight cases were filed against Defendant related to the Fortra Incident in the Middle District of Tennessee. These cases were consolidated on May 19, 2023, including:

- *Kuffrey v. Community Health Systems, Inc.*, Case No. 3:2023cv00285, filed March 28, 2023
- *Martin v. Community Health Systems, Inc.*, Case No. 3:2023cv00354, filed April 14, 2023
- *Gatti v. CHSPSC, LLC*, Case No. 3:2023cv00371, filed April 20, 2023
- *Casella v. CHSPSC, LLC*, Case No. 3:2023cv00396, filed April 21, 2023
- *Tatum et al v. CHSPSC, LLC*, Case No. 3:2023cv00420, filed April 26, 2023
- *Ferguson v. Community Health Systems, Inc.*, Case No. 3:2023cv00443, filed May 3, 2023
- *McGowan v. Community Health Systems, Inc.*, Case No. 3:2023cv00520, filed May 22, 2023
- *Underwood v. Community Health Systems, Inc.*, Case No. 3:2023cv00565, filed June 2, 2023

On June 26, 2023, Plaintiff Ross filed *Ross v. Community Health Systems, Inc.*, Case No. 3:2023cv00443, also arising from the Fortra Incident. *Ross* was filed almost three months after *Kuffrey* and more than a month after the other cases against Defendants were consolidated in the Middle District of Tennessee before Chief Judge Waverly Crenshaw. Plaintiff Ross voluntarily dismissed on December 4, 2023, and refiled the current case.

There is currently a proceeding before the U.S. Judicial Panel on Multidistrict Litigation (“JPML”) where a Motion for Transfer and Centralization was filed on October 16, 2023, to the District of Minnesota pursuant to 28 U.S.C. § 1407. *See Skurauskis, v. NationsBenefits Holdings, LLC*, Case No. 0:2023cv60830; *In Re*

Fortra File Transfer Software Data Security Breach Litigation, MDL No. 3090. Counsel in *Skurauskis, v. NationsBenefits Holdings* have identified the cases against Defendants Community Health Systems and CHSPSC as related cases arising from the Fortra Incident. Community Health Systems and CHSPSC plan to support the transfer request. A hearing on this motion is set to occur on January 25, 2024. *See In Re Fortra File Transfer Software Data Security Breach Litigation*, MDL No. 3090, ECF 78. If the JPML grants the transfer request, this case and the related consolidated cases against Defendants would be transferred to the *In Re Fortra* MDL docket in the District of Minnesota. In the event the JPML denies the transfer request, Defendants intend to file a motion to transfer the current case to the Middle District of Tennessee so that it may be consolidated with the other related cases.

“[T]he power to stay an action is ‘incidental’ to a court’s ‘inherent’ power.” *Sheetz v. Kares*, 534 F. Supp. 278, 279 (E.D. Pa. 1982) (quoting *Landis v. N. Am. Co.*, 299 U.S. 248, 254, 57 S. Ct. 163, 81 L. Ed. 153 (1936)). Such a decision is “left to the trial court’s broad discretion, and call[s] for the exercise of the court’s judgment in ‘weigh[ing] competing interests and maintain[ing] an even balance.’” *Infinity Computer Prods. Inc. v. Brother Int’l Corp.*, No. 10-3175, 909 F. Supp. 2d 415, 2012 U.S. Dist. LEXIS 179733, 2012 WL 6619200, at *4 (E.D. Pa. Nov. 16, 2012) (quoting *Landis*, 299 U.S. at 254-55)). In considering whether to grant a motion to stay, district courts are to evaluate: “(1) the length of the requested stay;

(2) the hardship that the movant would face if the stay was not granted; (3) the injury that a stay would inflict on the non-movant; and (4) whether granting a stay would streamline the proceedings by simplifying issues and promoting judicial economy.” *Vasvari v. Rite Aid Corp.*, No. 09-2069, 2010 U.S. Dist. LEXIS 86361, 2010 WL 3328210, at *2 (M.D. Pa. Aug. 23, 2010) (citing *Landis*, 299 U.S. at 254-55) (emphasis added).

There can be no serious dispute that staying this case would simplify issues and promote judicial economy. For starters, there is already a first-filed consolidated putative class action pending in Tennessee that overlaps with the instant matter. Even if the motion for transfer to MDL was not currently pending, there is a strong basis for transferring this matter to Tennessee. Now that all of the Fortra-related cases may be transferred to MDL, this matter should be stayed, pending the outcome of that motion. The consolidated case in Tennessee against CHSI and CHSPSC was stayed pending resolution of the transfer to MDL on November 9, 2023. Indeed, these cases seem like a poster child for why the MDL process exists. The Fortra breach impacted dozens of that company’s customers. Many of those customers (such as CHSPSC) have been sued due to events related to that breach. This is precisely the scenario for which the MDL process was intended – i.e., complex multiparty litigation across multiple jurisdictions. To avoid the unnecessary

expenditure of judicial resources, this matter should be stayed pending the outcome of the current motion to initiate MDL proceedings.

CONCLUSION

For the foregoing reasons, Defendant respectfully moves this Court to stay all responsive pleading deadlines pending the outcome of the motion to consolidate all Fortra related cases in MDL.

Respectfully submitted,

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4891-3910-2364, v. 2